S.B.Civil Second Appeal No.256/2005

Suraj Mal @ Suraj Bhan vs. Sahab Dutta @ Sahib Ditta

Date : 4.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Dron Kaushik, for the appellant.

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Heard learned counsel for the appellant.

The appellant is aggrieved against the judgment and decree of the first appellate court dated 5.5.2005 by which the appellate court reversed the findings recorded by the trial court and dismissed the suit of the plaintiff filed for specific performance of contract dated 18.7.1984.

According to learned counsel for the appellant, the defendant agreed to sell his share in the property by the agreement dated 18.7.1984. In the agreement, there was a condition that the defendant shall obtain sanad for land in question and will also obtain sale permission from the competent authority.

According to learned counsel for the appellant, Sanad was granted on 13.6.1988 but the defendant did not obtain the sale permission and, therefore, the plaintiff did not file the suit for specific performance of contract. It is submitted that since the defendant is the brother of plaintiff, therefore, the plaintiff tried to persuade the defendant to execute the sale deed but he did not execute

the sale deed and, therefore, some time was taken.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the appellate court as well as the trial court.

According to the plaintiff himself, the agreement is dated 18.7.1984 and the suit has been filed on 28.7.1995 after a delay of 11 years despite the fact that according to the plaintiff himself, sanad was granted for the land on 13.6.1988. Not only this, but according to the plaintiff himself, the defendant denied execution of sale deed on 8.9.1992 and still the plaintiff filed the suit for specific performance of contract on 28.7.1995. In these circumstances, there is no illegality in recording the finding that the suit was time barred apart from the fact that the decree for specific performance of contract is discretionary decree and in the facts of the case, I do not find that the first appellate court has committed any error of law and fact in dismissing the suit of the plaintiff.

No substantial question of law is involved in this appeal. Hence, this second appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya